

## REMARKS

Claims 1 and 4-24 are pending in the present application. Claims 8-22 are presently withdrawn from consideration. By this Amendment, new claims 23-24 have been added. Applicants respectfully request reconsideration of the present claims in view of the foregoing amendments and the following remarks.

### I. Formal Matters:

#### Election of Species Requirement - Withdrawn Claims 8-22

Applicants respectfully request consideration of claims 8-22. As indicated in Applicants' May 12, 2010 Response to Restriction Requirement, elected species (a) paraquat and (b) N-(aminopropyl)morpholine read on claims 1 and 4-22.

It should be further noted that presently withdrawn claims 8-22 depend from independent claim 1, directly or indirectly, and consequently contain all of the claim features of independent claim 1. For at least this reason, Applicants respectfully submit that claims 8-22 should be considered with claims 1 and 4-7.

If claims 8-22 are not considered in the next office action, Applicants respectfully request rejoinder of claims 8-22 upon allowance of independent claim 1. MPEP §1893.03(d) provides the following instructions regarding rejoinder of withdrawn claims:

If an examiner (1) determines that the claims lack unity of invention and (2) requires election of a single invention, when all of the claims drawn to the elected invention are allowable (i.e., meet the requirements of 35 U.S.C. 101, 102, 103 and 112), the nonelected invention(s) should be considered for rejoinder. Any nonelected product claim that requires all the limitations of an allowable product claim, and any nonelected process claim that requires all the limitations of an allowable process claim, should be rejoined. See MPEP §821.04. Any nonelected processes of making and/or using an allowable product should be considered for rejoinder. The examiner should notify applicants of potential rejoinder of non-elected process claims by placing form paragraph 8.21.04 at the end of any lack of unity determination made between a product and a process of making the product or between a product and a process of using the product.

Given the instructions in MPEP §1893.03(d), Applicants respectfully request rejoinder of claims 8-22 upon allowance of independent claim 1.

Rejection of Previously Presented Claims 6-7 Under 35 U.S.C. §112, Second Paragraph

Previously presented claims 6-7 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. This rejection is respectfully traversed.

Applicants do not understand the present rejection of claims 6-7 under 35 U.S.C. §112, second paragraph. The July 07, 2010 Office Action suggests that each of claims 6 and 7 recites a broad ratio range of a ratio by weight of (i) the amine or amide adjuvant to (ii) the agrochemical active ingredient, as well as a narrower range of a ratio by weight of (i) the amine or amide adjuvant to (ii) the agrochemical active ingredient within the same claim. In particular, the July 07, 2010 Office Action states the following on page 2, lines 20-22:

In the present instance, claims 6-7 recites the broad recitation ratio, and the claim also recites ratio preferably from 1:20 to 10:1 (see claim 7 for same error) which is the narrower statement of the range/limitation.

Applicants respectfully submit that each of claims 6 and 7 depends directly from independent claim 1. Independent claim 1 does not recite any ratio by weight of (i) the amine or amide adjuvant to (ii) the agrochemical active ingredient. In addition, each of claims 6 and 7 recites a single ratio by weight of (i) the amine or amide adjuvant to (ii) the agrochemical active ingredient. There simply is not a more narrow range within a broader range within either of claim 6 or claim 7.

For at least the reasons provided above, Applicants respectfully submit that claims 6 and 7 meet the definiteness requirements of 35 U.S.C. §112, second paragraph. Accordingly, Applicants respectfully request withdrawal of the rejection of previously presented claims 6-7 under 35 U.S.C. §112, second paragraph.

II. Prior Art Rejection:

Rejection of Previously Presented Claims 1 and 4-7 Under 35 U.S.C. §103(a) In View Of Kliegman, Rodham or Itoh In Combination With Burns

Previously presented claims 1 and 4-7 were rejected under 35 U.S.C. §103(a) as being unpatentable in view of U.S. Patent No. 4,328,026 issued to Kliegman et al. (hereinafter,

"Kliegman"), U.S. Patent Application Publication No. 2002/0025986 to Rodham et al. (hereinafter, "Rodham") or U.S. Patent Application Publication No. 2005/0159599 to Itoh et al. (hereinafter, "Itoh") in view of U.S. Patent No. 5,035,738 issued to Burns et al. (hereinafter, "Burns"). This rejection is respectfully traversed.

The teaching of Kliegman is directed to phosphoranyl derivatives containing nitrogen, compositions containing the phosphoranyl derivatives, and method of using the phosphoranyl derivatives as an agricultural product. Beginning in column 4, line 18, Kliegman discloses mixtures containing a phosphoranyl derivative in combination with an agricultural additive. From column 4, line 18 to column 6, line 19, Kliegman discloses hundreds (if not thousands) of possible agricultural additives, including paraquat, that may be used with the disclosed phosphoranyl derivatives.

The teaching of Rodham is directed to water-in-oil-in-water multiple emulsions comprising at least one active ingredient such as an agrochemical. In numerous examples, Rodham discloses water-in-oil-in-water multiple emulsions, wherein paraquat ion is the active ingredient.

The teaching of Itoh is directed to cyclic compounds and their use as pest control agents. The disclosed cyclic compounds may be combined with other herbicides such as one of the hundreds of herbicides disclosed in paragraph [0123]. Applicants note that paraquat is included in the list of hundreds of herbicides disclosed in paragraph [0123].

Each of the teachings of Kliegman, Rodham and Itoh fails to disclose, teach or suggest a composition comprising paraquat in combination with N-(aminopropyl)morpholine or a salt thereof. The July 07, 2010 Office Action acknowledges that each of the teachings of Kliegman, Rodham and Itoh fails to disclose, teach or suggest a composition comprising paraquat in combination with N-(aminopropyl)morpholine or a salt thereof; however, the July 07, 2010 Office Action suggests that one skilled in the art, given any one of the teachings of Kliegman, Rodham and Itoh, would have (1) sought out the teaching of Burns, and (2) subsequently combined paraquat from any one of the teachings of Kliegman, Rodham and Itoh with N-(aminopropyl)morpholine disclosed in the teaching of Burns. In particular, the July 07, 2010 Office Action states the following from page 3, line 19 to page 4, line 11:

Neither of the prior art references exemplify a composition comprising paraquat and cyclic amides such as 1,3-dimethyl-2-imidazolidone and/or aminoethylpiperazine. In addition, neither of the prior art references teach a composition comprising paraquat plus a cyclic amide such as N-(aminopropyl)morpholine (APM). However, Burns et al. teach a herbicidal composition comprising N-(aminopropyl)morpholine (cyclic amine) and glyphosate (claim 1). It would have been obvious to combine the teachings of Kliegman et al., Rodman et al. or Itoh et al. and Burns et al. to arrive at an invention comprising paraquat and N-(aminopropyl)morpholine. One would have been motivated to do this since all references individually teach a herbicidal utility. It is obvious to combine references directed to the same utility. Moreover, it would have been obvious to make an invention comprising paraquat plus cyclic amines such as 1,3-dimethyl-2-imidazolidone and/or aminoethylpiperazine. One would have been motivated to do this because the prior art references suggest the combination of cyclic amides and/or cyclic amines plus paraquat. With respect to the concentration of paraquat, an artisan in the field would have been expected to determine the optimum paraquat concentration. One would have been motivated to do this in order to make an invention that would have been effective as a herbicide without destroying desirable plants.

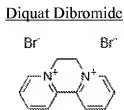
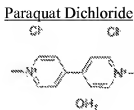
Applicants disagree.

Applicants note that the teaching of Burns is directed to agrochemical compositions, wherein N-(aminopropyl)morpholine is utilized to reduce the volatility of biologically active compounds containing a carboxylic acid group. Burns specifically discloses that N-(aminopropyl)morpholine forms a salt with the carboxylic acid group of a given biologically active compound so as to reduce the volatility of the biologically active compound. See, for example, column 1, lines 24-36.

Applicants note that paraquat and diquat do not contain a carboxylic acid group. Consequently, one skilled in the art, given the teaching of Burns, alone or in combination with any of the teachings of Kliegman, Rodham and Itoh, would not have been motivated to combine paraquat or diquat with N-(aminopropyl)morpholine.

The glyphosate salt (as well as other salts formed by the disclosed carboxylic acid group-containing herbicides) disclosed in the teaching of Burns comprise (i) an anionic portion comprising glyphosate (or another carboxylic acid group-containing herbicide) and (ii) a cationic portion formed by N-(aminopropyl)morpholine. In contrast, as shown below, paraquat and

diquat salts comprise (i) a cationic portion formed by paraquat and diquat, and (ii) an anionic portion comprising negatively-charged moieties (e.g., halogens).



Given the specific teaching of Burns, Applicants respectfully submit that the teaching of Burns in combination with any of the teachings of Kliegman, Rodham and Itoh specifically teaches away from Applicants' claimed combination of paraquat or diquat with N-(aminopropyl)morpholine, and instead instructs one skilled in the art to utilize N-(aminopropyl)morpholine in combination with a carboxylic acid-containing pesticide. To ignore this instruction in the teaching of Burns alters the principle operation of the teaching of Burns. The Federal Courts have frowned on such a modification of the prior art. As stated by the Court in *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959), "If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious."

For at least the reasons given above, the proposed combination with any of the teachings of Kliegman, Rodham and Itoh with the teaching of Burns fails to make obvious Applicants' claimed invention as recited in independent claim 1. Since claims 4-7 depend from independent claim 1 and recite additional claim features, the proposed combination with any of the teachings of Kliegman, Rodham and Itoh with the teaching of Burns also fails to make obvious Applicants' claimed invention as recited in claims 4-7. Accordingly, withdrawal of this rejection is respectfully requested.

### III. New Claims 23-24:

New claims 23-24 are directed to various embodiments of Applicants' claimed invention. Support for new claims 23-24 may be found throughout Applicants' original

specification including, but not limited to, the following locations: original claims 1-5 (claims 23-24).

For reasons similar to those given above, Applicants respectfully submit that new claims 23-24 are allowable over the art of record.

IV. Conclusion:

For at least the reasons given above, Applicants submit that claims 1 and 4-24 define patentable subject matter. Accordingly, Applicants respectfully request allowance of these claims.

Should Examiner Pryor believe that further action is necessary to place the application in better condition for allowance, Examiner Pryor is respectfully requested to contact Applicants' representative at the telephone number listed below.

No additional fees are believed due; however, the Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, to Deposit Account No. 503025.

Respectfully submitted,  
WITHERS & KEYS, LLC  
/James D. Withers/  
By: James D. Withers  
Reg. No. 40,376

WITHERS & KEYS, LLC  
P.O. Box 2049  
McDonough, Georgia 30253  
678-485-8324

W&K Matter No.: 10075.0049USWO  
Syngenta Docket No.: 70336